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Decision - #10-08
Comprehensive Permit – 15-26 Sachem Way, McCarthy Village II
October 12, 2010



Board of Appeals

TOWN OF ACTON

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**Comprehensive Permit
Issued to Acton Housing Authority
DECISION
#10-08**

15-26 Sachem Way
October 12, 2010

GRANTED with Conditions

This is a Decision of the Acton Zoning Board of Appeals (hereinafter the "Board") on the request for a Comprehensive Permit under Massachusetts General Laws ("M.G.L.") Chapter 40B, §20-23 (the "Act") and under Town of Acton Zoning By-Laws (the "Zoning Bylaw"), made by the Acton Housing Authority, 68 Windsor Avenue, Acton, MA 01720 (hereinafter the "Applicant") for the property located at 15-26 Sachem Way in Acton, Massachusetts, owned by the Acton Housing Authority, 68 Windsor Avenue, Acton, MA 01720. The property is identified on the 2007 Acton Town Atlas map C-5 as parcel 16 (hereinafter the "Site").

This Decision is in response to an application for a Comprehensive Permit to construct a total of 12 (twelve) new dwelling units in 6 (six) separate duplex buildings. The project consists of a total of 9 (nine) 2-bedroom units and 3 (three) 3-bedroom units. The ground floor unit in Building A will be wheel chair accessible. All proposed dwelling units will be affordable. The Acton Housing Authority currently operates 35 other affordable units on the property which were approved and built under a former Comprehensive Permit issued in 1984. When completed,

the Acton Housing Authority will operate a total of 47 affordable dwelling units on the property.

The Comprehensive Permit application was submitted to the Board of Appeals on July 13, 2010. The Board opened a duly noticed public hearing on August 2, 2010. The Board held continued hearings on September 13, 2010 and September 20, 2010. The Board closed the public hearing on September 20, 2010 and began its deliberations at that time. Throughout the duration of the hearings, the Board heard testimony from the Applicant, Town staff and abutters to the proposed project. Board members Kenneth Kozik (Chair), Jonathan Wagner (Member), and Adam Hoffman (Alternate Member) were present throughout the hearings. The minutes of the hearings and submissions on which this Decision is based may be referred to in the Town Clerk's office or the office of the Board at Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1.1 The application for a Comprehensive Permit entitled "McCarthy Village II" was filed with the Town Clerk on July 13, 2010. The drawings and documents submitted as part of the application and as revised throughout the course of the hearings are as follows:

- Project Introduction letter dated July 13, 2010;
- Comprehensive Permit Application Form;
- Comprehensive Permit Public Hearing Notice;
- Evidence of Compliance with Jurisdictional Prerequisites;
- Evidence of Applicant's authority to engage in development of housing as proposed by Application (M.G.L. c. 121B, Section 11)
- Letter from Massachusetts Housing Partnership dated July 8, 2010 regarding Determination of Project Eligibility Under Permanent Rental Financing Program;
- Copy of recorded property deed indicating site control by the applicant;
- Development Impact Report;
- Certified Abutters List;
- Use Description;
- Existing Site Conditions;
- Drainage Report prepared by Allen & Major Associates, Inc., 100 Commerce Way, P.O. Box 2118, Woburn, MA 01888-0118 dated June 1, 2010;
- List of Requested Waivers, revised August 2, 2010 seeking additional waivers;
- Affordable Dwelling Units;
- Sample copy of Massachusetts Housing Partnership's "Affordable Housing Restriction";
- Comprehensive Permit Development Schedule;
- Comprehensive Permit Unit Composition Schedule;
- Development Pro Forma;
- Developer Information and Background;
- Local Needs Assessment;
- Town of Acton Subsidized Housing Inventory Report;
- Package of drawings entitled "Comprehensive Permit Plans for McCarthy Village II" prepared by Allen & Major Associates, Inc., 100 Commerce Way, P.O. Box 2118, Woburn, MA 01888-0118 and consisting of the following plan sheets:

- Title/Cover Sheet dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- A-1: Abbreviation and Notes dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- A-2: Combined Site Plan prepared by Baker/Wohl Architects, 132 Lincoln Street, Boston, MA 02111 dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- X-1: Site Survey prepared by Precision Land Surveying, Inc., 32 Turnpike Road, Southborough, MA 01772 and dated February 10, 2010;
- C-1: Master Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-2: Layout & Material Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-3: Grading & Drainage Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-4: Utility Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- E-1: Electrical Site Plan & Details prepared by Nangle Engineering Incorporated, 32 Prince Street, Danvers, MA 01923 and dated May 24, 2010 and revised September 15, 2010;
- L1.1 - Planting Plan prepared by Schreiber Associates, Inc., 3 Fields Lane, Wayland, MA 01778 dated June 25, 2010 and revised September 15, 2010;
- L1.2 - Site Details prepared by Schreiber Associates, Inc., 3 Fields Lane, Wayland, MA 01778 dated May 25, 2010 and revised September 15, 2010;
- C-5: Site Plan & Profile dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-6: Earth Work Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-7: Erosion Control Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-8: Stormtech Infiltration System Details dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-9: Details dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-10: Details dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-11: Details dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- C-12: Details dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- X-1: Site Layout prepared by Hughes & MacCarthy, Inc., Architects & Engineers, 20 Speen Street, Framingham, MA, dated February 13, 1984 and revised through February 26, 1985;
- X-2: Site Grading prepared by Hughes & MacCarthy, Inc., Architects & Engineers, 20 Speen Street, Framingham, MA, dated February 13, 1984 and revised through February 26, 1985;

- X-2: Site Grading prepared by Hughes & MacCarthy, Inc., Architects & Engineers, 20 Speen Street, Framingham, MA, dated February 13, 1984 and revised through February 26, 1985;
- X-3: Site Utilities prepared by Hughes & MacCarthy, Inc., Architects & Engineers, 20 Speen Street, Framingham, MA, dated February 13, 1984 and revised through February 1, 1985;
- XX: Lighting Plan dated June 25, 2010, revised August 13, 2010 and September 15, 2010.

Additional plans and documentation submitted as part of the application included the following:

- Architectural drawings prepared by Baker/Wohl Architects, 132 Lincoln Street, Boston, MA 02111 and consisting of the following:
 - A1.1 – Site Plan dated August 13, 2010, revised September 15, 2010;
 - A1.2 – Combined Site Plan dated June 25, 2010;
 - A2.1 – Building A Floor Plans dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
 - A2.2 – Buildings B-D Floor Plans dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
 - A2.3 – Buildings E-F Floor Plans dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
 - A3.1 – Building A Elevations dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
 - A3.2 – Buildings B-D Elevations dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
 - A3.3 – Buildings E-F Elevations dated June 25, 2010, revised August 13, 2010 and September 15, 2010;
- Copy of 1984 Comprehensive Permit issued by the Board of Appeals to the Acton Housing Authority;
- Copy of Board of Appeals Minutes from March 26, 1984 meeting which discussed the Acton Housing Authority's application;

1.2 Interdepartmental communications were received from:

- Town Counsel, memo dated July 31, 2010;
- Sidewalk Committee, 2 emails dated July 20, 2010;
- Acton Community Housing Corporation, memo dated July 15, 2010;
- Board of Selectmen, dated June 8, 2010;
- Planning Department, memos dated July 30, 2010, revised September 10, 2010 and September 17, 2010;
- Water Supply District of Acton, memo dated September 9, 2010;
- Engineering Department, memos dated July 20, 2010, and revised September 13, 2010, and September 17, 2010;
- Municipal Properties Director & Tree Warden, email dated September 3, 2010;
- Health Department Director, email dated September 16, 2010;
- Natural Resources Director, email dated September 17, 2010;
- Fire Chief, email dated September 10, 2010.

1.3 Other Correspondence included:

- Email dated September 13, 2010 from Municipal Properties Director/Tree Warden to the applicant providing "informal comment/opinion" on landscape plan;

- Letter from abutter of the proposed project, dated September 13, 2010;
- Letter of project support from Town of Acton's Community Preservation Committee to Department of Housing and Community Development, dated September 14, 2010;
- Response letter from Allen & Major Associates, Inc. dated August 16, 2010, and revised September 14, 2010;
- Response letter from Baker/Wohl Architects dated August 16, 2010, and revised September 14, 2010;
- Copy of Letter dated August 13, 2010 sent to Town of Acton's Board of Selectmen from Acton Community Housing Corporation seeking permission to utilize additional \$20,000 from the Community Housing Program Fund to be put towards further landscaping and enhancing screening for abutting neighbors;
- Copy of Board of Selectmen's Draft Minutes from August 23, 2010 meeting which approved the additional landscaping funds identified in the previous comment;
- Map of abutting Wills Hole/Town Forest Conservation Land submitted by applicant at September 20, 2010 meeting.

1.4 Extension Agreements:

- Consent and Agreement to Extension of Hearing to September 13, 2010;
- Consent and Agreement to Extension of Hearing to September 20, 2010;
- Email from Applicant dated September 27, 2010 agreeing to extension of Decision filing deadline.

Exhibit 1.1 is hereinafter collectively referred to as the Plan.

2 FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits, and the record of the proceedings, the Board finds and concludes that:

- 2.1 The submitted application substantially complies with the Board's comprehensive permit application requirements as stated in the Town of Acton's "Rules and Regulations for Comprehensive Permits" adopted May 17, 2004, and the subsequent regulations of the Department of Housing and Community Development's ("DHCD") Housing Appeals Committee entitled "Comprehensive Permit; Low or Moderate Income Housing," 760 CMR 56.00 (the "Regulations").
- 2.2 According to DHCD's Chapter 40B Subsidized Housing Inventory (SHI) as of April 1, 2010, Acton's SHI percentage is 6.8%. As a result Acton does not presently have sufficient low or moderate income housing to meet Chapter 40B's minimum 10% criterion. Acton does, however, presently benefit from DHCD certification of its Affordable Housing Plan under the Planned Production Regulations, 760 CMR 56.03(4).
- 2.3 The proposed McCarthy Village II Project involves a substantial change to the McCarthy Village I project because it involves an increase of more than 10% in the number of housing units proposed.
- 2.4 The site is located within an R-A (Residence A) Residential Zoning District and Groundwater Protection District Zone 4.
- 2.5 The subject property is located outside Acton's Comprehensive Permit Policy's preferred locations for affordable housing. The property is located within $\frac{3}{4}$ of a mile of North Acton

Village and is in close proximity to retail and service establishments located along Great Road.

- 2.6 The subject property is located within $\frac{3}{4}$ of a mile of the North Acton Recreation Area (NARA Park) and directly abuts Wills Hole/Town Forest (Town of Acton Conservation Land).
- 2.7 The entire site/property is approximately 6.3 acres (280,091 ft²) in area. The subject project is located on approximately 2.5 acres (108,900 ft²) of the property.
- 2.8 There are currently 35 affordable rental units located on the property. There are 12 new residential dwelling units proposed. Upon completion of the proposed project, there will be a total of 47 affordable units.
- 2.9 A Comprehensive Permit was issued by the Board of Appeals in 1984 to construct the 35 affordable units which currently exist.
- 2.10 The Project proposes to construct a total of 12 new residential dwellings in 6 duplex buildings. The project consists of 9 (nine) 2-Bedroom units and 3 (three) 3-Bedroom units. The ground floor unit located in Building A will be wheel chair accessible. All 12 new residential dwelling units will be affordable.
- 2.11 The Applicant has requested waivers from the following Town of Acton's Zoning Bylaw provisions:
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Lot Frontage of 200'-0";
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Lot Width of 50'-0";
 - Section 5 - Table of Standard Dimensional Regulations – Minimum Front Yard setback of 30'-0";
 - Section 5 – Table of Standard Dimensional Regulations – Minimum Side Yard setback of 30'-0";
 - Section 5.3.2.1 – Dimensional Regulations Regarding Density;
 - Section 6.3.1.1 – Minimum Parking Space Requirements – Two parking spaces per dwelling unit required;

Additional waivers requested:

- Town of Acton's Subdivision Rules & Regulations
 - Section 8.1.7 – Minimum centerline offset of 1,000 feet for intersecting streets;
 - Section 8.1.16 – Dead-End Streets are not permitted;
 - Section 8.1.17 – 500 foot maximum length of Residential Single Access Street other than a Dead-End Street;
 - Section 8.1.18 – Cul-de-Sac Street turnaround minimum design standards;
 - Section 8.1.19 – Maximum number of residential dwelling units (40) permitted to be served by a single access street;

- Section 9.2.6 – Requires minimum 8” diameter water mains.

Given the regional need for affordable housing, the Board finds that the increased density of this Project is reasonable for affordable housing on this Site and that the access as proposed is adequate. Therefore, the Board grants the waivers required by the Plans from Section 5 (Dimensional Regulations) and Section 6 (Parking Standards) of the Zoning Bylaw, and Section 8 (Design Standards) and Section 9 (Improvements) of the Subdivision Rules & Regulations subject to the Conditions of this Decision.

- 2.12 The proposed Project, when conforming to the conditions set forth in this Decision, will adequately provide for storm water drainage, sewerage, will not be detrimental or injurious to the surrounding neighborhood, will provide for convenient and safe vehicular and pedestrian movement within and through the site, all without an undue burden on the occupants of the Project or on the surrounding neighborhood or the Town.
- 2.13 The proposed Project will, when conforming to the conditions in this Decision, not be a threat to the public health and safety of the occupants of the Project, the neighborhood, or the Town.
- 2.14 The proposed Project is supported by the evidence, and as conditioned below, (i) would not be rendered uneconomic by the terms and conditions of this Decision, and (ii) would represent a reasonable accommodation of the need for low and moderate income housing.
- 2.15 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this Decision as deemed appropriate by the Board.
- 2.16 This Decision has been issued and filed with the Town Clerk within the time frame specified in M.G.L. Ch. 40B, §20-23 and as agreed to by the Applicant.

3 GOVERNING LAW & JURISDICTIONAL ELEMENTS

- 3.1 The law governing this project is the Act and regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.00, and the Board's Rules & Regulations for Comprehensive Permits.
- 3.2 The Act prevents the possible use by cities and towns of exclusionary local bylaws to shut out needed low and moderate income housing. The purposes of the Act are satisfied if (a) a town has low or moderate income housing in excess of 10% of the housing units reported in the latest decennial census or which is on sites comprising 1.5% or more of the town's total area zoned for residential, commercial, or industrial use, or (b) if the application results in the commencement of low and moderate income housing construction on sites comprising more than 0.3% of such total area or 10 acres, whichever is larger, in one year.
- 3.3 Pursuant to the Act and the regulations promulgated by the Commonwealth of Massachusetts Department of Housing and Community Development Housing Appeals Committee at 760 CMR 56.04, an applicant for a comprehensive permit must fulfill three jurisdictional requirements:

- a) *The Applicant must be a public agency, a non-profit organization or a Limited Dividend Organization.*

The Acton Housing Authority is a public agency for purposes of jurisdictional prerequisite a). Housing authorities are created by statute and have the powers and duties set forth in General Laws c. 121B, §11, including without limitation the “powers necessary or convenient to carry out and effectuate the purposes of the relevant provisions of the General Laws” and the power to “engage in or contact for the construction ... of any ... housing, ... urban renewal or other project which it is authorized to undertake” Under the enabling statutes, “a housing authority, ‘although organized by and in each city and town in cooperation with the State, is nevertheless, when organized, a complete corporate entity in itself, distinct from the municipal corporation within whose territory it is set up.’ ... Such an authority, or any similar authority for other purposes, is a public body, analogous in various respects ... to a municipal corporation.” *Finance Commission of City of Boston v. McGrath*, 343 Mass. 754, 763 (1962).

- b) *The Project must be fundable by an authorized Subsidizing Agency under a Low or Moderate Income Housing subsidy program.*

According to the Massachusetts Housing Partnership’s letter, the Project “is eligible under the requirements of MHP’s Permanent Rental Financing Program” Accordingly, the Project is fundable by a Subsidizing Agency under a Low or Moderate Income Housing subsidy program.

- c) *The Applicant must “control the site”.*

According to the Deed, the Acton Housing Authority owns the site and an appurtenant 20 foot right of way to Great Road. Accordingly, the Acton Housing Authority controls the site.

4 BOARD ACTION

Therefore, the Board voted unanimously on September 20, 2010 to GRANT the requested Comprehensive Permit consisting of a total of 12 New Dwelling Units (all being affordable units) on the Site under the Act, subject to and with the benefit of the following Plan modifications, conditions, and limitations.

4.1 PLAN MODIFICATIONS

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer confirms that any proposed building permit plans are in compliance with information submitted, reviewed and approved as part of this Comprehensive Permit. Except where otherwise provided, all such information shall be subject to the approval of the Zoning Enforcement Officer. Where approvals are required from persons or agencies other than the Zoning Enforcement Officer, the Applicant shall be responsible for providing evidence of such approvals to the Zoning Enforcement Officer.

4.1.1 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the Site Plan to identify spot grades on the snow storage area located between Buildings C and D showing that the snow storage area is pitched towards the paved area. This shall be completed to the satisfaction of the Engineering Department.

4.1.2 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the roadway pavement details to show a 12”

gravel base course as per Town of Acton design standards. This shall be completed to the satisfaction of the Engineering Department.

- 4.1.3 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the sidewalk details to show a 3" pavement thickness and a 6" gravel base course as per Town of Acton design standards. The gravel base is to be applied in two 3-inch lift courses. This shall be revised and completed to the satisfaction of the Engineering Department.
- 4.1.4 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the drain manhole details to clearly call out shaped inverts on all manhole structures. This shall be completed to the satisfaction of the Engineering Department.
- 4.1.5 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the Site Plan to clearly indicate the creation and continued maintenance of a trail connection beginning at the edge of the parking lot between Buildings C and D and connecting to the existing trail system located within the Wills Hole Conservation Area. This shall be completed to the satisfaction of the Planning, Engineering and Conservation Departments.
- 4.1.6 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the Site Plan to clearly show that there is no raised curb at the location of the handicap ramp. Instead, the Plans shall be revised to show a flush curb with adjacent curbing transitioning to a flush condition. This shall be completed to the satisfaction of the Engineering Department.
- 4.1.7 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the Site Plan to relocate the fire hydrant at the end of the site driveway which is currently located within the snow storage area. This will allow for the fire hydrant to be accessible year round. This shall be completed to the satisfaction of the Engineering Department.
- 4.1.8 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall revise the Site Plan to include a "No Parking" sign at the end of the truck turnaround. This shall be completed to the satisfaction of the Engineering Department.

4.2 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this Comprehensive Permit null and void, without force and effect, and shall constitute grounds for the revocation of this Comprehensive Permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this Comprehensive Permit using any and all powers available to it under the law.

- 4.2.1 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall submit a landscape plan to the satisfaction of, and be approved by the Municipal Properties Director/Tree Warden. Said landscape plan shall, as much as possible, include low impact plantings in "Green" areas in order to minimize irrigation needs.

- 4.2.2 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall verify that the proposed development will not have any further negative impact, nor encroach into the Wills Hole Conservation Area.
- 4.2.3 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall verify that all appliances to be installed within the proposed dwelling units be Energy Star appliances as stated within the original application. This was proposed to assist the Applicant in achieving LEED certification for the project.
- 4.2.4 The Applicant shall ensure that all proposed exterior lighting be residential in nature and comply fully with the Town of Acton's Zoning Bylaw, Section 10.6.1.1, Table I.
- 4.2.5 No play area is being approved as part of this Comprehensive Permit. However, should the Applicant wish to install a play area in the future, and it were to be *de minimis* in nature, would not require further Board of Appeals review or approval. Any other approvals (building permits, conservation commission, etc.) for such play area would still be required.
- 4.2.6 Prior to the issuance of the final Certificate of Occupancy for the new dwelling units, the Applicant shall clearly create and provide continued maintenance of a trail connection beginning at the edge of the parking lot between Buildings C and D and connecting to the existing trail system located within the Wills Hole Conservation Area. This shall be completed to the satisfaction of the Planning, Engineering and Conservation Departments
- 4.2.7 The Project shall be established and constructed in compliance with any and all applicable requirements promulgated by the Acton Board of Health, including but not limited to the following:
- a) All Units shall be connected to the sewer system and the North Acton Sewage Treatment Plant.
 - b) The Applicant shall obtain all necessary permits for connection of the Project to the Acton private sewer system, including those necessary to excavate any abutting streets to install the connection.
 - c) The Applicant shall obtain any and all necessary permits pertaining to Stormwater Management.
- 4.2.8 The Applicant shall submit a construction and permitting schedule prior to the start of construction and semi-annually thereafter to the ZBA to assist in Project status update and review.
- 4.2.9 All utilities, including but not necessarily limited to electric, cable and telephone shall be located underground.
- 4.2.10 This Project shall be established and conducted at all times in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.
- 4.2.11 No work on the Site shall begin prior to the issuance of a building permit.
- 4.2.12 The Applicant shall be diligent to ensure that absolutely no construction debris or material from the site enter any of the abutting properties or the Great Road public right-of-way. The Applicant shall be responsible for sweeping, removal of snow, and sanding

of the internal roadways permitting access to residents and emergency vehicles during construction.

- 4.2.13 The Applicant shall make every attempt to minimize any adverse or nuisance construction conditions (such as, but not limited to dust, noise, vibrations, etc.) from existing in and around the Site and affect neighboring and abutting properties during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- 4.2.14 All construction activity on the property relating to this Comprehensive Permit shall be limited to the hours of: Monday – Friday: 7:00am – 6:00pm; Saturday 8:00am – 5:00pm; Sundays & Holidays as recognized by the Commonwealth of Massachusetts: no work permitted.
- 4.2.15 All work on the Site shall be conducted in accordance with the terms of this Comprehensive Permit and shall conform with and be limited to the improvements shown on the Plan and as modified herein.
- 4.2.16 All water service lines, water mains and appurtenances shall be installed in accordance with the specifications of the Acton Water Supply District.
- 4.2.17 Prior to commencement of any construction concerning any portion of the Project (whether pursuant to a building permit or otherwise) the Applicant shall submit to the Zoning Enforcement Officer for review and approval a final set of Engineering Drawings and Architectural Plans for the project which shall be identical to those cited in Section I – Exhibits (above) of this Decision except that they shall be updated in accordance with the requirements of this Decision. Each plan sheet shall be signed by and show the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect and Registered Professional Architect or some combination of these as appropriate to the data on the sheet. The submission shall in addition include a list of the specific changes made to conform to the requirements of this Decision; this list and the final set of Engineering Drawings and Architectural Plans shall be signed and stamped by the Design Engineer and Project Architect. Upon the Zoning Enforcement Officer finding that the Engineering Drawings and Architectural Plans conform with this Decision, he shall mark “Approved” on the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the final “Approved Plans” under this Decision and shall be filed with the records of the Board.
- 4.2.18 In the event the Zoning Enforcement Officer determines that the Applicant’s construction drawings submitted with its building permit application(s) materially deviate from the final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Comprehensive Permit Decision, the Zoning Enforcement Officer shall notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this Decision in accordance with 760 CMR 56.05(11). In the event of a disagreement between the Zoning Enforcement Officer and the Applicant with respect thereto, they shall notify the Board which shall thereupon determine whether the building permit construction drawings (with any necessary revisions) do conform to this Decision, the Board shall endorse those construction drawings if so requested by the Applicant.
- 4.2.19 By granting waivers from the local bylaws and regulations identified in Findings 2.11 above, it is the intention of this Comprehensive Permit to permit construction of the

Project as shown on the final Approved Plans. If, in reviewing the Applicant's building permit application(s), the Zoning Enforcement Officer determines that any additional waiver from local zoning, wetlands, health, or subdivision regulations is necessary to permit construction to proceed as shown on the final Approved Plans, the Zoning Enforcement Officer shall proceed as follows: (a) any matter of *de minimis* nature shall be deemed within the scope of the waivers granted by this Comprehensive Permit; and (b) any matter of a substantive nature, including those having a potential adverse impact on public health, safety, welfare or the environment shall be reported back to the Board for expeditious disposition of the Applicant's request for a waiver therefrom. Once the Project has been constructed in accordance with the Approved Plans, neither this Comprehensive Permit nor the Waivers set forth herein shall authorize any further waiver of the Acton Zoning Bylaw or other local by-laws, rules and regulations; and any future modification of any building, structure or Dwelling Unit constructed within the Project thereafter shall conform to the Acton Zoning Bylaw and other local by-laws, rules and regulations.

- 4.2.20 The Applicant shall pay all fees of the Town of Acton generally imposed with respect to construction projects and for the purposes of monitoring compliance of the project's building construction and occupancy in accordance with this Comprehensive Permit.
- 4.2.21 The Applicant shall copy the Zoning Enforcement Officer on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings and other permits issued for the Project.
- 4.2.22 This Decision shall promptly be recorded at the Middlesex South District Registry of Deeds or the Middlesex Registry District of the Land Court along with any appropriate pages of the Approved Plans. Proof of recording shall be forwarded to the Board and the Zoning Enforcement Officer prior to the issuance of any building permit.
- 4.2.23 The Applicant shall comply with the State Building Code.
- 4.2.24 The Applicant shall maintain a copy of the endorsed Approved Plans and this Decision at the Site during construction.
- 4.2.25 The Applicant shall obtain temporary easements or written permission from any abutting property owner if, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting purposes.
- 4.2.26 Prior to the final Certificate of Occupancy being issued for the Project, the Applicant shall submit to the Board an "As-Built Plan" showing all pavement, buildings, drainage structures, and other infrastructure as they exist on the Site, above and below grade, including appropriate grades and elevations. The "As-Built Plan" shall include an accurate utilities plan and profile, showing actual in-ground installation of all utilities after completion of construction. The Applicant shall have fully completed the improvements and plantings shown on the Landscaping Plan identified in Condition 4.2.1, which shall also be included on the submitted "As-Built Plan". Each plan sheet shall be signed and show the seal of a Registered Professional Engineer, Registered Land Surveyor or Professional Landscape Architect, certifying that field inspections have been conducted through-out the duration of construction and the Project as-built, conforms and complies with all conditions of this Comprehensive Permit and the Approved Plans.
- 4.2.27 The Applicant shall ensure safe and convenient vehicular access into and around the Site during the entire duration of the Project. Any traffic problems that occur as a result

of onsite operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Zoning Enforcement Officer or Building Commissioner. The Board's representatives shall be permitted access to the Site to observe and inspect the Site and construction progress until such time as the Project has been completed.

- 4.2.28 All construction vehicles shall be parked on the Site and off of Great Road at all times.
- 4.2.29 The Project shall be limited to the creation of the 12 (twelve) new Dwelling Units that shall contain a mix of 2- and 3-bedrooms units.
- 4.2.30 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building, the Applicant shall obtain approvals from the Engineering Department, Police Chief, and Fire Chief on the permanent street address of each Dwelling Unit within the Project.
- 4.2.31 Any dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.
- 4.2.32 As security for the completion of the infrastructure related to the Project as shown on the Approved Plan, including, but not limited to, the roadway, sidewalks, parking areas, common areas, drainage facilities, utilities, landscaping, recreational area, and any other specific infrastructure shown on the final Approved Plans (the "Infrastructure"), the release of Certificate of Occupancy permits for all Dwelling Units within the development shall be subject to the following restrictions:
 - (a) No Certificate of Occupancy permit for any Dwelling Unit shall be issued, until:
 - (1) the base and binder course for the driveway and parking areas shown on the Plan has been installed; (2) all Infrastructure described herein and as shown on the Plan has been constructed or installed so as to adequately serve said project, provided however, that the final coat of pavement for the driveway and parking areas need not be installed in order to obtain Certificate of Occupancy permits for the first 11 newly constructed Dwelling Units; and (3) all conditions of this Comprehensive Permit that require action or resolution by the Applicant prior to the issuance of Certificate of Occupancy permits have been completed to the satisfaction of the Zoning Enforcement Officer. The roadway, common parking areas, individual driveways and all remaining infrastructure must be fully completed and installed prior to the issuance of a Certificate of Occupancy for the 12th and final newly constructed Dwelling Unit. All water connections shall be approved by the Acton Water District and completed and paid for by the Applicant in accordance with Acton Water District rules and regulations.
 - (b) Notwithstanding the foregoing, if in the judgment of the Zoning Enforcement Officer landscaping cannot reasonably be completed because the time of year is inhospitable thereto, landscaping may be treated separately from Infrastructure such that the Applicant may be permitted to post a bond in lieu of completing the landscaping prior to release of the Certificate of Occupancy permits for the Dwelling Units; provided that the Applicant shall complete the landscaping no later than the next growing season or the bond shall be forfeited.
- 4.2.33 The Applicant shall maintain and repair the drainage structures and stormwater management system on the Site as shown on the Approved Plans. The Applicant shall submit an adequate plan for maintenance and repair of the stormwater management

system to the satisfaction of the Zoning Enforcement Officer prior to the issuance of a building permit for more than two new dwelling units in one duplex building.

- 4.2.34 Prior to the issuance of a building permit for more than two new dwelling units in one duplex building for the subject property, the Applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 4.2.35 Prior to any Certificate of Occupancy being approved or issued for the subject use, the Applicant shall demonstrate compliance with all conditions and comments imposed by the Board through this Comprehensive Permit.
- 4.2.36 The Applicant must adhere to the DEP Stormwater Management Policy and Guidelines, which expressly preclude any post-development increase in runoff from the Site.
- 4.2.37 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the Site does not strictly and fully conform to the requirements of the Acton Zoning Bylaw; and reference to these conditions shall be incorporated in the Rental/Lease Documents for the Project and for any Dwelling Unit in the Project.
- 4.2.38 At least seven days prior to the start of construction, the Applicant shall provide written notice to the Board and to the residential abutters of the Project of the anticipated construction start date and the anticipated construction schedule.

4.3 CONDITIONS - LEGAL & AFFORDABILITY REQUIREMENTS

- 4.3.1 The Acton Housing Authority and its successors and assigns shall maintain McCarthy Village II and all 12 (twelve) new dwelling units comprising said project as affordable rental for as long as the housing is not in compliance with Acton's local zoning requirements, regardless of the terms of any attendant construction subsidy agreements.
- 4.3.2 The units shall be affordable to low-income households. All 12 (twelve) new dwelling units shall be made available to potential eligible renters with household incomes up to 50% of the area median income for the Boston Metropolitan Primary Statistical Area (BMPSA).
- 4.3.3 The Acton Housing Authority, in collaboration with the Department of Housing and Community Development (DHCD), shall be responsible for the development and implementation of a tenant selection criteria. The tenant selection criteria shall comply with all requirements and regulations set forth by HUD (United States Department of Housing and Urban Development).
- 4.3.4 The Applicant shall record in the chain of title to the Site and provide to the Board a registry-certified copy of an affordable housing restriction as required by the public funding agencies. The affordable housing restriction to be recorded shall be similar to the example provided as part of the Comprehensive Permit application.
- 4.3.5 Any sale or transfer of rights or interests in all or any part of the Site shall include a condition that successors and assigns are bound by the terms and conditions of this Comprehensive Permit. This Comprehensive Permit may not be transferred to a person or entity other than the Acton Housing Authority without the prior written approval of the

Board and the execution of any instruments or documents that may be reasonably required by the Board to assure the continuing enforcement of this Comprehensive Permit.

- 4.3.6 The Acton Housing Authority and its successors and assigns shall be bound by all conditions and requirements set forth in this Comprehensive Permit. No conversion of the Project from affordable rental housing to condominium, cooperative, any other form of ownership of the Site or the Dwelling Units in the Project shall occur without the advance permission of the Board nor for as long as the housing is not in compliance with Acton's local zoning requirements.
- 4.3.7 The roadways, utilities, drainage systems, and all other infrastructure shown in the Approved Plan shall remain owned by the Acton Housing Authority and its successors and assigns. The Town of Acton shall not have, now or ever, any legal responsibility for the operation or maintenance of this Infrastructure, including but not limited to snow removal and trash collection.

4.4 LIMITATIONS

The authority granted to the Applicant under this Comprehensive Permit is limited as follows:

- 4.4.1 The foregoing required conditions, legal requirements and affordability requirements have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 4.4.2 If, between the date this Decision is filed in the office of the Acton Town Clerk and the completion of the Project, the Applicant desires to change in a material way and/or to a significant degree the proposed Project as reflected in and approved by this Decision, such changes shall be governed by 760 CMR 56.05(11). In no case shall the Applicant be allowed to implement a Project change that increases the number of units, changes the mix of affordable and market rate units, or increases the height of the buildings on the Site, without submitting a new application and undergoing a new public hearing and Decision process. Without limitation, in the event any subsequent permitting process results in a change to the Approved Plans that triggers the need for further waivers from local bylaws, rules, or regulations, any such matter shall be treated as a project change and the procedures in 760 CMR 56.05(11) shall be followed.
- 4.4.3 This Comprehensive Permit applies only to the Site identified in this Decision and to the proposed development as shown on the Plan.
- 4.4.4 Except as set forth herein, other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4.5 This Decision permits the construction, use, and occupancy of twelve (12) new Dwelling Units on the Site. The construction and use of the Site shall be in conformity with the Approved Plan, and there shall be no further subdivision of the Site, or the creation of additional Dwelling Units or any other structures or Infrastructure except that which is shown on the Approved Plan, without further approval by the Board in the form of an amendment to this Decision.
- 4.4.6 If construction authorized by this Comprehensive Permit Decision has not commenced within three (3) years of the date on which the permit becomes final, the permit shall

lapse. The permit shall become final on the date that the written Decision is filed in the office of the town clerk if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. The Board may grant an extension of the three year lapse date for good cause shown, which shall include without limitation delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Project. Any request for extensions shall be made at least thirty (30) days prior to expiration. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates, and the Board herewith reserves its rights and powers to grant or deny such extension.

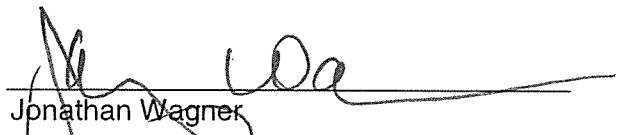
- 4.4.7 In the event a typographical error renders this Decision and the final Approved Plans inconsistent as to the number of units, number of bedrooms, or similar objective characteristic of the Project, the provisions of the final Approved Plans shall control on the point of inconsistency. Otherwise this Decision shall be given full force and effect on its terms, unless amended by the Board in writing.
- 4.4.8 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Comprehensive Permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.


5 APPEALS

- 5.1 Any person aggrieved by the issuance of this Comprehensive Permit has the right to appeal pursuant to M.G.L. Ch. 40A, § 17 and shall file such appeal within 20 days after the date of filing this decision with the Town Clerk.
- 5.2 The Applicant shall have the right to appeal the issuance of this Comprehensive Permit to the housing appeals committee pursuant to M.G.L. Ch. 40B, § 22 and shall file such appeal within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Zoning Board of Appeals


Kenneth F. Kozik, Chairman


Jonathan Wagner


Adam Hoffman

This is to certify that the 20-day appeal period under M.G.L. c. 40A, § 17, on this decision has passed and there have been no appeals made to this office.

Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -
certified mail #
Town Clerk
Fire Chief
Water Supply District of Acton
Conservation Commission

Building Department
Engineering Department
Planning Department
Police Chief
Municipal Properties
ACHC

Board of Health
Assistant Assessor
Town Manager
Owner
Board of Selectmen
Town Counsel